

FILED by ELECTRONIC	Page 1 of 5 JUL 10, 2008 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**08-20633-CR-MORENO/TORRES**  
Case No. \_\_\_\_\_

16 U.S.C. § 3372(d)(1)  
16 U.S.C. § 3373(d)(3)(A)(i)  
18 U.S.C. § 2

UNITED STATES OF AMERICA

v.

MAC RIVENBARK,

Defendant/

**INDICTMENT**

The Grand jury charges that:

**COUNT I**

**(Lacey Act Violation: False Labeling)**  
**(16 U.S.C. §§ 3372(d)(1), 3373(d)(3)(A)(i))**

At all times material to this Indictment:

1. Defendant, **MAC RIVENBARK**, was a resident of the State of Florida, owner and general manager of Mac's Orchids, and was engaged in the business of the purchasing, importing, repacking, and sale of orchid plants.

**The Convention on International Trade in  
Endangered Species of Wild Fauna and Flora**

2. In order to protect certain species of fish and wildlife against over-exploitation, the United States became a signatory to an international treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, T.I.A.S. 8249, (hereinafter "CITES"). Appendix I of CITES includes wildlife species which are threatened with extinction and for which trade must be subject to particularly strict regulation and only authorized in exceptional

circumstances. CITES, Art. II, § 1. Appendix II of CITES includes wildlife species which although not necessarily threatened with extinction now, may become so unless trade in specimens of such species is strictly regulated. CITES, Art. II, § 2(a).

3. The United States Fish and Wildlife Service ("USFWS"), Department of the Interior, is designated by Congress pursuant to the Endangered Species Act, Title 16, United States Code, Section 1537(a), as the CITES enforcement authority within the United States. The Department of the Interior publishes regulations to implement CITES in 50 C.F.R. Part 23. All species protected by CITES are listed in 50 C.F.R. § 23.23.

4 Orchids, which are plants within the family *Orchidaceae*, are protected under Appendix II of CITES. 50 C.F.R. § 23.23. Before importing a specimen of any animal or plant protected under Appendix II of CITES from any foreign country, a valid foreign export permit or re-export certificate, or a corresponding document must be obtained. CITES, Art. IV, §§ 1, 2 and 4; 50 C.F.R. § 23.12(a)(2)(I), 23.14(b).

5. The Endangered Species Act, Title 16, United States Code, Section 1538(c)(1), states in relevant part, "It is unlawful for any person . . . to engage in any trade in any specimens [of plant] contrary to the provisions of . . . [CITES] or to possess any specimens [of plant] traded contrary to the provisions of . . . [CITES]." "Trade" means among other things "to import." CITES, Art. I(c).

#### **Lacey Act**

6. The Lacey Act, Title 16, United States Code, Section 3372(d)(1), makes it unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been or is intended to be imported or received from any foreign country.


7. On or about February 25, 2005, at Miami International Airport, Miami-Dade County, in the Southern District of Florida, the defendant,

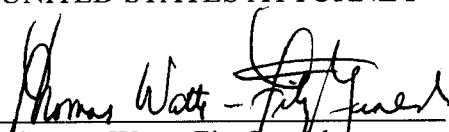
**MAC RIVENBARK,**

did knowingly make and submit a false record, account, label for, and a false identification of plants, that is, approximately 1,403 orchid plants, in that the defendant presented a CITES document and other records, labels, and identification materials to officials of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, that falsely identified said orchid plants as artificially propagated in the Republic of the Philippines, when in fact, as the defendant then knew, said orchid plants were wild collected in the Republic of the Philippines, said plants having been and intended to be imported into the United States from a foreign country, in violation of Title 16, United States Code, Sections 3372(d)(1) and 3373(d)(3)(A)(i), and Title 18, United States Code, Section 2.

A TRUE BILL

FOREPERSON

  
R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

  
Thomas Watts-FitzGerald  
Assistant United States Attorney

UNITED STATES OF AMERICA

CASE NO. \_\_\_\_\_

vs.

## CERTIFICATE OF TRIAL ATTORNEY\*

MAC RIVENBARK,

Defendant.

## Superseding Case Information:

## Court Division: (Select One)

X Miami \_\_\_\_\_ Key West  
 \_\_\_\_\_ FTL \_\_\_\_\_ WPB \_\_\_\_\_ FTP

New Defendant(s) \_\_\_\_\_  
 Number of New Defendants \_\_\_\_\_  
 Total number of counts \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No  
 List language and/or dialect \_\_\_\_\_

4. This case will take 3 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)	
I 0 to 5 days	<u>X</u>	Petty _____
II 6 to 10 days	_____	Minor _____
III 11 to 20 days	_____	Misdem. _____
IV 21 to 60 days	_____	Felony <u>X</u>
V 61 days and over	_____	

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: \_\_\_\_\_

Case No. \_\_\_\_\_

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) No

If yes:

Magistrate Case No. \_\_\_\_\_

Related Miscellaneous numbers: \_\_\_\_\_

Defendant(s) in federal custody as of \_\_\_\_\_

Defendant(s) in state custody as of \_\_\_\_\_

Rule 20 from the \_\_\_\_\_ District of \_\_\_\_\_

- Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? \_\_\_\_\_ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? \_\_\_\_\_ Yes X No

  
 THOMAS WATTS-FITZGERALD  
 ASSISTANT UNITED STATES ATTORNEY  
 Florida Bar No./Court No. 0273538

\*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**PENALTY SHEET**

Defendant's Name: MAC RIVENBARK

Case No: \_\_\_\_\_

Count #: 1

False invoicing of imported plants

16 U.S.C. §§ 3372(d)(1) and 3373(d)(3)(A)(i)

**\* Max. Penalty:** 5 years' imprisonment

Count #:

**\*Max. Penalty:** \_\_\_\_\_

Count #:

**\*Max. Penalty:** \_\_\_\_\_

Count #:

**\*Max. Penalty:** \_\_\_\_\_

Count #:

**\*Max. Penalty:** \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**